

Message Text

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PAGE 01 KUWAIT 0517Z 130820Z
ACTION COME-00

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TO SECSTATE WASHDC 8973

LIMITED OFFICIAL USE KUWAIT 5172

E.O. 11652: N/A
TAGS: ETRD PFOR
SUBJECT: MINISTRY OF ELECTRICITY DROPS BOYCOTT CLAUSES FROM
CONSULTING CONTRACT

1. THE CALIFORNIA FIRM OF DANIEL, MANN, JOHNSON
AND MENDENHALL (DMJM INTERNATIONAL) IS READY TO SIGN A
CONSULTING CONTRACT WITH THE MINISTRY OF ELECTRICITY AND
WATER (NEW) FOR THE DESIGN AND CONSTRUCTION SUPERVISION
MANAGEMENT OF A PUMPING STATION WITH FACILITIES FOR GROUND
WATER STORAGE, BLENDING WITH BRACKISH WATER AND
REDISTRIBUTION THROUGHOUT KUWAIT.

2. THE CONTRACT INITIALLY OFFERED DMJM INTERNATIONAL
CONTAINED TWO CLAUSES WITH BOYCOTT LANGUAGE, THE MAJOR
CLAUSE OF WHICH READS AS FOLLOWS: "10.13.7 THE CONSULTANTS
ADMIT THAT THEY ARE FULLY AWARE AND IN COMPLETE OBSER-
VANCE OF PROVISIONS OF ISRAEL BOYCOTT LAW NO. 21 OF
1964 AS WELL AS CODES, REGULATIONS AND DECISIONS
APPLICABLE OR WILL BE ISSUED BY ISRAEL BOYCOTT BUREAU."
SECONDARY CLAUSE IS AS FOLLOWS: "10.14 THIS DEED SHALL,
IN ALL RESPECTS, BE CONSIDERED AS A KUWAITI CONTRACT AND
SHALL BE CONSTRUED AND IMPLEMENTED ACCORDINGLY. IT SHALL
BE SUBJECT TO THE LAWS, RULES AND REGULATIONS IN FORCE
IN KUWAIT."

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3. AFTER DISCUSSIONS BETWEEN DMJM REPS AND THE MEW
LEGAL COUNSEL ZIWAD J. DAJANI, AND A MEETING WITH THE DI-
RECTOR OF FINANCIAL AFFAIRS MOHAMMED DAJANI, THE LANGUAGE
OF THE CONTRACT WAS CHANGED. CLAUSE 10.13.7 WAS DROPPED
ENTIRELY. THE FOLLOWING LANGUAGE WAS USED IN PLACE OF
10.13.7 AND CLAUSE 10.14: "THIS CONTRACT IS MADE UNDER

AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF KUWAIT AND ALL MATTERS RELATING THERETO, INCLUDING BUT WITHOUT LIMITING THE GENERALITY THEREOF, THE FORMATION, INTERPRETATION, PERFORMANCE AND BREACH OF THIS CONTRACT, SHALL BE DETERMINED BY SUCH LAWS."

4. AFTER SOME INITIAL RESISTANCE, THE DIRECTOR OF FINANCIAL AFFAIRS SEEMED QUITE OPEN TO THE CHANGES IN THE CONTRACT LANGUAGE. HE DID, HOWEVER, MAKE THE POINT WITH THE REPRESENTATIVE OF DMJM THAT THE CONSTRUCTION CONTRACTORS FOR THIS PROJECT WOULD HAVE TO COMPLY WITH THE FULL LANGUAGE OF BOYCOTT PROVISIONS. WE DO NOT KNOW WHETHER THE DIRECTOR WAS VOICING NEW POLICY OR HIS OWN.

5. THE REPRESENTATIVES OF DMJM INTERNATIONAL HAVE EXPRESSED THEIR WILLINGNESS TO THE EMBASSY TO EXPLORE WITH MEW THE POSSIBILITY OF INCORPORATING INTO THE TENDER DOCUMENTS LANGUAGE FOR SUCH CONSTRUCTION WHICH WOULD PROVE ACCEPTABLE UNDER EXPORT ADMINISTRATION GUIDELINES AND US ANTIBOYCOTT LEGISLATION.

6. COMMENT: THE RELAXATION OF LANGUAGE WITH REFERENCE TO THE BOYCOTT OF ISRAEL WITHIN MEW (AND ALSO WITHIN THE MINISTRY OF HEALTH, WAS EVIDENCED IN THE CONSULTING CONTRACT RECENTLY SIGNED BY FRIESEN WHICH HAD CONTAINED LANGUAGE QUITE SIMILAR TO THAT IN PARA 3) IS GRATIFYING.
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THESE CASES, HOWEVER, SHOULD NOT BE CONSIDERED EVIDENCE THAT GOK COMMERCIAL DOCUMENTS GENERALLY ARE TO BE PURGED OF BOYCOTT LANGUAGE. MEW, IN THIS CASE, AND MIN HEALTH IN FRIESEN'S CASE, HAD DECIDED, ON A HIGH TECHNICAL LEVEL, THAT THEY WANTED TO WORK WITH THE PARTICULAR AMERICAN FIRMS. THIS DECISION MADE IT EASIER FOR THEM TO NEGOTIATE ALTERNATE LANGUAGE. WITH SUCH DOCUMENTS AS PUBLIC CALLS FOR TENDER NO SUCH LEVERAGE EXISTS, AND THE DOCUMENTS CONTINUE TO POSE SERIOUS LEGAL PROBLEMS FOR AMERICAN BIDDERS UNDER ANTI-BOYCOTT LEGISLATION.
MAESTRONE

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Message Attributes

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Control Number: n/a
Copy: SINGLE
Sent Date: 12-Sep-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
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Disposition History: n/a
Disposition Reason:
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